

## ATTACHMENT I

### **TRUST AGREEMENT**

Trust Agreement, the "Agreement," entered into as of [date] by and between J.H. Baxter & Company, a California Limited Partnership, the "Grantor," and Wells Fargo Bank, National Association, a national banking association primarily located in Los Angeles, California, the "Trustee."

Whereas, the United States Environmental Protection Agency, "EPA," an agency of the United States Government has issued an Administrative Order on Consent dated \_\_\_\_\_, 2001 (Order), Docket Number RCRA-10-2001-0086 for certain work to be performed at the Baxter Wood Treating Facility in Arlington, Washington, a copy of which is Attachment 1.

Whereas Paragraph 132 of the Order provides that Grantor will provide financial assurance subject to the limitations contained in Section XXIV of the Order for the performance of certain studies, specifically a Drinking Water Sampling and Alternate Water Supply Plan, a Site Investigation, and a Corrective Measure Study.

Whereas, the Grantor has elected to establish a trust to provide all or part of such financial assurance for the facility identified herein,

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this Agreement, and the Trustee is willing to act as trustee,

Now, Therefore, the Grantor and the Trustee agree as follows:

**Section 1. Definitions.** As used in this Agreement:

- a. The term "Grantor" means J.H. Baxter & Company and any successors or assigns of the Grantor.
- b. The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

**Section 2. Identification of Facilities and Amount of Financial Assurance.** This Agreement pertains to the J. H. Baxter & Co. facility at 6520 188<sup>th</sup> Street, N.E. in Arlington, Snohomish County, Washington and the amount of financial assurance as set forth in the attached Schedule A.

**Section 3. Establishment of Fund.** The Grantor and the Trustee hereby establish a trust fund, the "Fund," for the benefit of EPA. The Grantor and the Trustee intend that no third party have access to the Fund except as herein provided. The Fund is established initially as consisting of the property described in Schedule A attached hereto. Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided.

The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by EPA.

**Section 4. Payment for Work Performed Under the Order.** The Trustee shall make payments from the Fund as the Grantor or EPA shall direct in accordance with the following procedure.

- a. Grantor will submit invoices for work performed for the items enumerated in Paragraphs 51, 52 and 53 of the Order, from time to time to be paid by the Fund by delivering to Trustee a certificate ("Claim Certificate") signed by an officer of Grantor stating:
  - (i) That the invoice is for work performed at the Facility in accordance with Paragraphs 51, 52, and 53 of the Order and is to be paid from the Fund.
  - (ii) The amount of the claim, and
  - (iii) That Grantor has sent a copy of such Claim Certificate to EPA and the date on which such copy was sent.
- b. Trustee shall not make any distribution of Funds with respect to any Claim made by Grantor hereunder until:
  - (i) It receives the written consent or agreement of EPA with respect to such distribution; or
  - (ii) The time period for EPA to dispute such claims in accordance with Section 5 has passed without an Objection Notice from EPA ; or
  - (iii) There is a Final Decision with respect to a Disputed Claim ("Final Decision" means an agreement between the parties or a written decision pursuant to Section XVII of the Order).
- c. If Trustee received from EPA written notice of consent or agreement to all or part of a Claim, the Trustee shall thereupon promptly pay that portion of the invoice(s) for which EPA has granted consent from the Funds. If the Funds are not sufficient to pay in full any amounts payable under this Section, Trustee shall pay that part of the invoices as can be paid from such Fund.
- d. If EPA notifies the Trustee in writing that Grantor has refused to move forward or Grantor is unable to move forward with the Work under the Paragraphs 51, 52 and 53 of the Order and that the

Dispute Resolution process as described in Section XVII (Dispute Resolution) of the Order has been completed, then

- (i) EPA shall submit to Trustee invoice(s) for the work conducted pursuant to Paragraphs 51, 52, and 53 of the Order and indicate its approval of all or part of the invoice(s); and,
- (ii) Trustee shall pay that portion of the invoice(s) approved by EPA and as directed by EPA.

**Section 5. Disputed Claims.** EPA may dispute or object to any Claim, in whole or in part, by delivering to the Trustee a notice (an “Objection Notice”) within 45 days of EPA’s receipt of the claim notice stating:

- a. That EPA disputes or objects to such Claim;
- b. The reasons for such objections or dispute, set forth in reasonable detail;
- c. That EPA has sent a copy of said Objection Notice to Grantor and the date on which such copy was sent; and,
- d. The portion of the Claim set forth in the Claim Certificate, if any, which is not disputed or objected to.

Any disputed claims shall be resolved pursuant to Section XVII (Dispute Resolution) of the Order. Trustee shall not pay the disputed portion of any claim until it has received written notice from EPA that the dispute resolution has been completed pursuant to Section XVII of the Order. Such notice shall instruct the Trustee regarding what portion, if any, of the disputed claim should be paid from the Fund.

**Section 6. Payments Comprising the Fund.** Payments made to the Trustee for the Fund shall consist of cash.

**Section 7. Trustee Management.** The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

- a. Securities or other obligations of the Grantor, or any other owner or operator of the facilities, or any of their affiliates as defined in the

Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2.(a), shall not be acquired or held, unless they are securities or other obligations of the Federal or a State government;

- b. The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time not to exceed six days (6) and without liability for the payment of interest thereon.
- c. In the absence of timely written direction, the Trustee shall invest the funds in the Wells Fargo Funds "Government Money Market," a money market mutual fund.
- d. For the investments made in accordance with Section 7 hereof, the Trustee may purchase or sell to itself or any affiliate, as principal for agent, investments authorized by this Section. Such investment, if registerable, shall be registered in the name of the Trustee for the benefit of the Fund and held by the Trustee. The Trustee may act as purchaser or agent in the making or disposing of any investments. The Trustee shall not be liable for any loss of market value incurred by assets in the Fund so long as such assets consist of Permitted Investments. For purposes of this Agreement, "Permitted Investments" includes United States Treasury and Governmental Agency obligations, repurchase agreements collateralized by United States Treasury and Governmental Agency obligations and shares of a money market mutual fund whose assets consist solely of such permitted obligations.
- e. The investments in the Wells Fargo Funds are not obligations of, or endorsed or guaranteed by, the Trustee or its affiliates and are not insured by the Federal Deposit Insurance Corporation. The Trustee serves as investment advisor, custodian and transfer agent for the Wells Fargo Funds and will be paid, and its bank affiliates may be paid, fees for services to the Fund and that those fees may include Processing Organization fees.
- f. Such investments will be made as soon as possible following the availability of such funds to the Trustee for investment, taking into consideration the regulations and requirements (including cut-off times) of the Federal Reserve wire system, the investment provider and the Trustee, and compliance with standard operating procedures of such parties.

Investments designation may be changed through written instructions to the Trustee, substantially in the form of a letter specifying other Investment Securities meeting the requirements of the Trust Agreement. Such change in the designation will become effective upon receipt by the Trustee.

**Section 8. Express Powers of Trustee.** Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, and

To compromise or otherwise adjust all claims in favor of or against the Fund.

**Section 9. Taxes and Expenses.** All brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund. Any taxes in respect of income derived from the investment of funds held or payments made hereunder shall be paid by the Grantor. Grantor agrees to indemnify and hold the Trustee harmless from and against any taxes, additions for late payment, interest, penalties and other expenses that may be assessed against the Trustee on or with respect to any payment or other activities under this Agreement unless any such tax, addition for late payment, interest, penalties and other expenses shall arise out of or be caused by the actions of, or failure to act by, the Trustee. Parties agree that, for tax reporting purposes, all interest or other taxable income earned from the investment of the Funds in any tax year shall be taxable to Grantor. Grantor shall, within 30 days after the date hereof, provide the Trustee with certified tax identification numbers by furnishing appropriate forms W-9 or W-8 and other forms and documents that the Trustee may reasonably request. The parties hereto understand that if such tax reporting documentation is not so certified to the Trustee, the Trustee may be required by the Internal Revenue Code of 1986, as amended, to withhold a portion of any interest or other income earned on the investment of monies or other property held by the Trustee pursuant to this Agreement.

**Section 10. Annual Valuation.** The Trustee shall annually, at least 30 days prior to the anniversary date of establishment of the Fund, furnish to the Grantor and to EPA Region 10 Regional Administrator with copies to the EPA Project Manager and EPA Assistant Regional Counsel identified in the Notice list ("EPA Project Attorney") a statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value as of no more than 60 days prior to the anniversary date of establishment of the Fund. The failure of the Grantor to object in writing to the Trustee within 90 days after the statement has been furnished to the Grantor and the EPA Regional Administrator with copies to the EPA Project Manager and EPA Project Attorney shall constitute a conclusively binding assent by the Grantor, barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

**Section 11. Advice of Counsel.** The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

**Section 12. Trustee Compensation.** Trustee is entitled to compensation in accordance with "Schedule B" attached hereto and incorporated herein by reference and shall be payable in accordance with Section 9.

**Section 13. Successor Trustee.** The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. The Trustee must give the Grantor and EPA sixty (60) days written notice of its intent to resign. If for any reason the Grantor cannot or does not act within the sixty day (60) period to appoint a successor Trustee and the EPA does not appoint a successor trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in a writing sent to the Grantor, the EPA Regional Administrator, and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

**Section 14. Instructions to the Trustee.** All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by Grantor's Executive Vice President or Chief Financial Officer. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the EPA to the Trustee shall be in writing, signed by the EPA Region 10 Regional Administrator, or his designees, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or EPA hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or EPA, except as provided for herein.

**Section 15. Notice of Nonpayment.** If no payment is received from the Grantor within thirty days (30) days of the date that the specific payment is due as described in Schedule A, then the Trustee shall notify in writing the Grantor and EPA Region 10 Regional Administrator with copies to the EPA Project Manager and EPA Project Attorney, by certified mail within 10 days following the expiration of the 30-day period, that the payment from the Grantor has not been received as required in Schedule A.

**Section 16. Amendment of Agreement.** This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee, and the EPA Region 10 Regional

Administrator or by the Trustee and the EPA Region 10 Regional Administrator if the Grantor ceases to exist.

**Section 17. Irrevocability and Termination.** Subject to the right of the parties to amend this Agreement as provided in Section 16, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and the EPA Regional Administrator, or by the Trustee and the EPA Regional Administrator, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses shall be delivered to the Grantor.

**Section 18. Immunity and Indemnification.** The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the EPA Regional Administrator, issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

**Section 19. Notices.** All notices, requests, demands, and other communications under this Agreement shall be in writing and shall be deemed to have been duly given (a) on the date of service if served personally on the party to whom notice is to be given, (b) on the day of transmission if sent by facsimile transmission to the facsimile number given below, and telephonic confirmation of receipt is obtained promptly after completion of transmission, (c) on the day after delivery to Federal Express or similar overnight courier or the Express Mail service maintained by the United States Postal Service, or (d) on the fifth day after mailing, if mailed to the party to whom notice is to be given, by first class mail, registered or certified, postage prepaid, and properly addressed, return receipt requested, to the party as follows:

If to GRANTOR:

Georgia Baxter  
Executive Vice President  
J.H. Baxter & Company  
1700 South El Camino Real  
San Mateo, CA 94402-0902  
Tel: 650-349-0201  
Fax: 650-570-6878

And

John Sonksen  
Chief Financial Officer/Vice President  
J.H. Baxter & Company  
1700 South El Camino Real  
San Mateo, CA 94402-0902  
Tel: 650-349-0201  
Fax: 650-570-6878

If to TRUSTEE:

Wells Fargo Bank, National Association  
Attn: Kimberly A. Vann  
707 Wilshire Boulevard, 17<sup>th</sup> Floor  
Los Angeles, CA 90017  
Tel: 213-614-3352  
Fax: 213-614-3355

If to EPA:

Regional Administrator  
U. S. Environmental Protection Agency  
Region 10  
Mail Stop RA-140  
1200 Sixth Avenue  
Seattle, WA 98101  
Tel: 206-553-1234  
Fax: 206-553-1809

with copies to:

Kimberly Ogle  
EPA Project Manager  
U. S. Environmental Protection Agency  
Region 10  
Mail Stop WCM-126  
1200 Sixth Avenue  
Seattle, WA 98101  
Tel: 206-553-0955  
Fax: 206-553-8509

Jennifer G. MacDonald, Esq.  
Office of Regional Counsel  
U. S. Environmental Protection Agency  
Mail Stop ORC-158  
1200 Sixth Avenue,  
Seattle, WA 98101  
Tel: 206-553-8311  
Fax: 206-553-0163

Grantor, Trustee or EPA may change the designated recipient under this Section by sending a written notice to the other Party and the Beneficiary. Such change shall be effective ten (10) days after receipt.



**Section 20. Choice of Law.** This Agreement shall be administered, construed, and enforced according to the laws of the State of California.

**Section 21. Interpretation.** As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each Section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

**Section 22. Copies.** Original signature copies of the Agreement will be provided to EPA, Grantor and Trustee.

In Witness Whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written:

[Signature of Grantor]  
[Title]

[Title]  
[Seal]

[Signature of Trustee]

[Title]  
[Seal]

State of \_\_\_\_\_

County of \_\_\_\_\_

On this [date], before me personally came [owner or operator] to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that she/he is [title] of [corporation], the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that she/he signed her/ his name thereto by like order.

**Schedule A**  
Contribution of Funds into the Trust Fund

1. **Initial Contribution** Within 30 days of the effective date of the Order, the Fund shall be established initially as consisting of cash in the amount of five hundred thousand dollars (\$500,000).
2. **Subsequent Contributions.** Baxter shall make two additional contributions to the Fund of two hundred and fifty thousand dollars (\$250,000) each. The first of these payments will be made twelve months after the effective date of the Order and the second payment shall be made eighteen months after the effective date of the Order. If the balance in the account falls below one hundred thousand dollars (\$100,000), Baxter will within thirty days accelerate the next payment into the Fund.

## Schedule B



*Corporate Trust Services  
707 Wilshire Blvd., 17<sup>th</sup> Floor  
Los Angeles, CA 90017  
Tel: (213) 614-3351  
Fax: (213) 614-3355*

### **SCHEDULE OF FEES to act as TRUSTEE for J.H. Baxter & Company**

**Acceptance Fee:** **\$500.00**

Initial Fees as they relate to Corporate Trust Services acting in the capacity of Trustee, includes creation and examination of the Trust Agreement; acceptance of the Trust appointment; setting up of a Trust Account and accounting records; and the coordination of receipt of funds for deposit to the Trust Account. Acceptance fee payable at time of Trust Agreement execution.

**Trustee Annual Administration Fee:** **\$1,500.00**

For ordinary services of the Trustee, including normal administration of the Trust Account. Ordinary services include: daily routine account management; investment transactions; cash transaction processing, including wires and check processing; monitoring claim notices pursuant to the agreement; disbursement of the funds in accordance with the agreement; and trust account statements sent to all applicable parties. Payable in advance, with the first installment payable at the time of Trust Agreement execution. This fee will not be prorated in the case of early termination. Tax reporting is not included.

***Wells Fargo's bid is based on the following assumptions:***

- Number of Trust funds/accounts to be established: One (1)
- Number of Deposits to Trust Fund: Not more than Five (5) year
- Number of Withdrawals from Trust Fund: Not more than Twenty (20) per year; \$50 for each additional withdrawal
- Period of time for Trust to be in existence: Indefinite
- **ALL FUNDS WILL BE INVESTED IN ONE OF SEVERAL WELLS FARGO MONEY MARKET FUNDS**
- **ALL FUNDS WILL BE RECEIVED FROM OR DISTRIBUTED TO A DOMESTIC ENTITY**
- **TRUSTEE IS NOT RESPONSIBLE FOR TAX REPORTING - IF TRUSTEE PROVIDES TAX REPORTING SERVICES, A MINIMUM ADDITIONAL \$1000 CHARGE WILL BE ASSESSED PER YEAR**

**Out-of Pocket Expenses:**

**At Cost**

**All out-of-pocket expenses will be billed in addition to the above, such as airborne or federal express, outside accounting firms, publication costs, and/or travel expenses of bank officers attending closing outside of the Southern California area, etc.**

*Submitted by:* John T. Deleray – 4/09/2001 (Revised)  
Vice President/Business Development  
Wells Fargo Bank  
(213) 614-3351